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WASHINGTON POLICY STRATEGY

Potomac Perspective

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Even though the annual spending bills have been punted into 2024, Congress faces a packed schedule in December. A defense policy bill and a Federal Aviation Administration (FAA) reauthorization bill could be vehicles for other legislation related to China trade policy, financial services, and the cannabis industry. Congress will also try to pass a foreign aid bill that could include changes to immigration policy. Also, the year-end rush could start with a vote in the House to expel one of its members which could, in turn, have implications for the debate in 2024 over the spending bills.

NATIONAL DEFENSE AUTHORIZATION ACT (NDAA)

Export Controls

Congress is working to finalize the annual NDAA, a defense policy bill, which could also include export control legislation and financial services legislation. The Senate included language in its NDAA bill that would create a notification process for several industries pertaining to investments in China with national security implications. The covered sectors include:

- Advanced semiconductors and microelectronics;
- Artificial intelligence;
- Quantum information science and technology;
- Hypersonics;
- Satellite-based communications; and
- Network laser scanning systems with dual-use applications.

Some key House Republicans want to replace the Senate's approach with one that targets specific companies rather than entire industries. That disagreement could be resolved later this week.

While the Senate proposal merely establishes a notification requirement, it should be noted that the process under the Committee on Foreign Investment in the United States (CFIUS) started as a notification requirement and has evolved into an application and approval process.

Financial Services and the Cannabis Industries

The NDAA could also be a vehicle for several financial services bills. Cannabis banking, cryptocurrency regulation, credit card legislation (i.e. Durbin 2.0), and compensation claw backs for executives of failed banks are among the items that could be included in the NDAA. The odds are against these bills being included in a final NDAA bill, but last-minute negotiations can produce surprises, and investors in the cannabis and financial services sectors should keep an eye on developments in the coming weeks.

FAA REAUTHORIZATION AND CORPORATE TAX IMPLICATIONS

Congress is also attempting to reauthorize the FAA. Since the FAA bill includes revenue provisions, such as user fees, it could be a vehicle for corporate tax legislation that Congress has been debating for over a year. Some in Congress are looking to suspend changes made in the Jobs and Tax Cuts Act of 2017 to Research and Development expensing, bonus depreciation, and a recent limit in the formula used to calculate the business interest deduction. Some lawmakers have threatened to block the corporate tax changes unless there is a change to the limit on State and Local Tax deduction, while other lawmakers want to tie the corporate tax changes to an increase in the Child Care Tax Credit. The path to passing the corporate tax package is littered with potholes that could doom it.

While Congress might attempt to pass a FAA reauthorization bill this month, it might, instead, pass a short-term extension for the FAA and pass a longer-term bill in early 2024. This could also complicate chances of the corporate tax proposals since it would mean Congress would have to make the changes retroactive to 2023, which could dilute the impact of the changes in tax law.

FOREIGN AID SUPPLEMENTAL

Congress will also be debating a foreign aid package before it returns home for Christmas. In the wake of Hamas's attack on Israel on October 7, the Biden administration announced a \$104 billion package of aid for Israel, Ukraine, and Taiwan, as well as additional funds for U.S. border security. The House subsequently passed a bill providing aid for Israel which was offset by cuts in the Internal Revenue Service's budget. The Senate is working on a separate and comprehensive plan that would fund all areas requested by the Biden administration and could include changes in immigration policy.

Senate Republicans have pushed for changes in immigration policy beyond just additional spending on border security. Progressives, who oppose changes in the policy, and conservatives, who think the immigration package won't go far enough, could block the immigration proposal which could, in turn, complicate passing the broader bill.

Some Democrats, especially progressives, want conditions on aid to Israel. At the same time, some Republicans oppose additional aid to Ukraine, so the politics of passing a foreign aid/immigration bill have become increasingly complicated and momentum to provide aid to Israel has dissipated. Congress might still reach a deal before the holidays, but failure to pass a bill in 2023 would severely hurt the bill's chances. The debate in early 2024 over the spending bill, coupled with the fact that 2024 is a presidential election year, could further complicate the bill's chances.

RAMIFICATIONS OF EXPELLING REPRESENTATIVE SANTOS

The House could vote as soon as today to expel Representative George Santos (R-New York). The House Ethics Committee recently released a report which alleged that Mr. Santos violated campaign finance laws, among other things. While the expulsion of Mr. Santos might strike some as "just politics," it has potential policy ramifications especially when Congress considers spending bills in early 2024. Currently, House Republicans currently have a 222-213 majority, so they can only afford four defections on any given vote. Expelling Santos would reduce the number of Republicans in the House to 221. Furthermore, Representative Bill Johnson (R-Ohio) has accepted the job as president of Youngstown University and will resign from Congress at a yet to be determined date – probably in early 2024, thus further reducing the GOP's House majority. Although Santos has not been a reliable vote for the Republican leadership on key votes, his expulsion still reduces the margin of error at a time when the leadership will need every vote possible to avoid a possible government shutdown in early 2024.

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